

McCABE & MACK LLP

**MEMO ENDORSED**

J. JOSEPH MCGOWAN  
DAVID L. POSNER  
ELLEN L. BAKER  
SCOTT D. BERGIN  
RICHARD R. DUVAL  
LANCE PORTMAN  
RICHARD J. OLSON  
MATTHEW V. MIRABILE  
CHRISTINA M. BOOKLESS  
KIMBERLY HUNT LEE  
KAREN FOLSTER LESPERANCE  
REBECCA M. BLAHUT  
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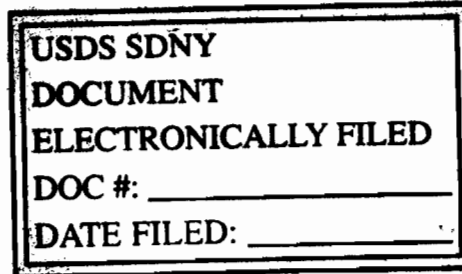
JOHN E. MACK  
(1874-1958)

JOSEPH A. MCCABE  
(1890-1973)

EDWARD J. MACK  
(1910-1998)

JOSEPH C. MCCABE  
(1925-1981)

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April 15, 2008

Hon. Kenneth M. Karas  
United States District Court  
Southern District of New York  
United States Courthouse  
300 Quarropas Street  
White Plains, NY 12601

RE: Williams v. Lahar, et al  
08 CIV 0408 (KMK)  
Our File No. 7969-0027

Dear Judge Karas:

With respect to defendants' pending request to file a motion to dismiss the amended complaint as filed in violation of F.R.Civ.P. Rule 15(a) the Court is asked to note that plaintiff was represented by counsel since at least June 2005 when he filed a notice of claim under New York's General Municipal Law §50 *et. seq.* A hearing pursuant to §50-h was demanded but canceled by plaintiff due to the pendency of his criminal charges. (See attached). This office was never contacted again and, literally, assumed the claim was abandoned until January 25, 2008 when notice that this suit was commenced on January 16, 2008 was received (plaintiff now has new counsel. Mr. Cibella withdrew from the case at the end of October 2005. We do not know when new counsel was retained).

My office answered the complaint on February 26, 2008 and thereafter received no interrogatories or other discovery demands seeking the identities of the John Doe defendants. As part of our obligation under Rule 26(a) we provided plaintiff's counsel with the pertinent police report in a timely fashion which apparently led to the filing of the amended complaint on March 21, 2008 without seeking leave of the court.

Plaintiff's apparent apathy towards his case cannot prejudice the newly named defendants such that they lose their ability to raise the statute of limitations defense. Plaintiff has had three years in which to file a state FOIL request and first doing so in January or February 2008 does not excuse his earlier and

Hon. Kenneth M. Karas

April 15, 2008

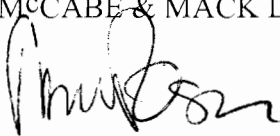
Page 2

continued lack of diligence. He also could have filed prompt discovery demands in this case.

Rule 15(a), and its clear procedures, have ben violated without any justification or excuse and defendants respectfully seek permission to file a motion to dismiss.

Respectfully yours,


MCCABE & MACK LLP



DAVID L. POSNER

DLP/dmf

cc: Stephen Bergstein, Esq./Bergstein & Ullrich, LLP

THE CLERK OF COURT IS  
RESPECTFULLY DIRECTED  
TO DOCKET THIS LETTER  
TOGETHER WITH DEFENDANTS'  
LETTER OF APRIL 16, 2008,  
AND THE NOTICE OF CLAIM  
PROVIDED TO THE COURT.  
PURSUANT TO PROCEEDINGS  
AT THE CONFERENCE OF  
JUNE 13, 2008, THIS LETTER SHALL  
BE DEEMED A MOTION TO DISMISS  
**SO ORDERED** THE AMENDED COMPLAINT.  
  
**KENNETH M. KARAS U.S.D.J.**  
8/8/08

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April 16, 2008

Hon. Kenneth M. Karas  
United States District Court  
Southern District of New York  
United States Courthouse  
300 Quarropas Street  
White Plains, NY 12601

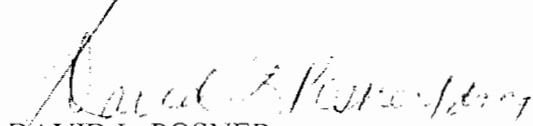
RE: Williams v. Lahar, et al  
08 CIV 0408 (KMK)  
Our File No. 7969-0027

Dear Judge Karas:

Enclosed find a copy of Mr. Cibella's letter which was inadvertently not enclosed in my letter to you of April 15, 2008. We are sorry for any inconvenience this may have caused.

Respectfully yours,

McCABE & MACK LLP



DAVID L. POSNER

DLP/dmf

cc: Stephen Bergstein, Esq./Bergstein & Ullrich, LLP

7969-27

LAW OFFICES OF  
MICHAEL V. CIBELLA, LLC

THE LINCOLN BUILDING  
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NEW YORK, NEW YORK 10165

(212) 818-1880

OF COUNSEL TO  
SMILEY & SMILEY, LLP

FAX: (212) 697-4689  
e-mail: mvc@CibellaLaw.com

June 30, 2005

David L. Posner, Esq.  
McCabe & Mack, LLP  
63 Washington Street  
P.O. Box 509  
Poughkeepsie, New York 12602

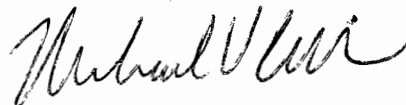
Re: Williams v. City of Newburgh  
Notice of Claim

Dear Mr. Posner:

Please allow this letter to confirm our telephone conversation earlier today whereby we agreed to adjourn the 50-h hearing, which you had Noticed for July 29, 2005, until a later date to be determined after Mr. Williams' underlying and ongoing criminal case has been disposed of.

If you have any questions or would like to discuss this matter further, please call me. Thank you for your courtesy and cooperation.

Sincerely,



Michael V. Cibella

MVC:jrr

cc: Joseph Williams

KAB  
H  
File

-----X

In the Matter of the Claim of

JOSEPH WILLIAMS

**NOTICE OF CLAIM**

-against-

CITY OF NEWBURGH,  
POLICE OFFICER WILLIAM LAHAR, and  
JOHN DOE numbers "1" through "10", Individually

-----X

TO:

**CITY OF NEWBURGH  
c/o City Clerk's Office  
City Hall  
83 Broadway  
Newburgh, New York 12550**



PLEASE TAKE NOTICE, that the undersigned claimant hereby makes a claim and demand against you as follows:

1. **The name and post-office address of each claimant and claimant's attorneys**

**are:**

**CLAIMANT**

JOSEPH WILLIAMS  
56 Johnston Street  
Newburgh, New York 12550

**ATTORNEYS**

LAW OFFICES OF MICHAEL V. CIBELLA, LLC  
60 East 42<sup>nd</sup> Street, Ste. 950  
New York, New York 10165

2. **The nature of the claim:** An action to recover monetary damages for the serious and permanent personal, mental and emotional injuries sustained by the claimant, JOSEPH WILLIAMS, as a result of the assault, battery, false arrest, false imprisonment, malicious prosecution, intentional infliction of emotional distress, negligent infliction of emotional distress,

negligence, recklessness, carelessness, violation of Civil Rights under 42 U.S.C. § 1983, and violation of Civil Rights pursuant to § 296 of the Executive Law committed by the CITY OF NEWBURGH, the NEWBURGH POLICE DEPARTMENT, their agents, servants and/or employees, POLICE OFFICER WILLIAM LAHAR, and JOHN DOE numbers “1” through “10”.

3. **The time when, the place where and the manner in which the claim arose:**

Sunday, March 20, 2005, at approximately 3:00 A.M., on the street in the vicinity of 160 Ann Street, in the City of Newburgh. While the claimant, JOSEPH WILLIAMS, was lawfully operating a motor vehicle on a public highway, he was unlawfully stopped, detained, arrested, and violently assaulted by POLICE OFFICER WILLIAM LAHAR and other members of the NEWBURGH POLICE DEPARTMENT and employees of the CITY OF NEWBURGH, namely, JOHN DOE numbers “1” through “10”, at which time, claimant JOSEPH WILLIAMS was caused to suffer serious and permanent physical, mental and emotional injuries when the vehicle claimant JOSEPH WILLIAMS was operating was unlawfully stopped by members of the NEWBURGH POLICE DEPARTMENT for no justifiable reason, and POLICE OFFICER WILLIAM LAHAR and other members of the NEWBURGH POLICE DEPARTMENT, namely, JOHN DOE numbers “1” through “10”, forcibly and violently removed and pulled claimant JOSEPH WILLIAMS out of his vehicle and onto the road with no lawful basis and POLICE OFFICER WILLIAM LAHAR and other members of the NEWBURGH POLICE DEPARTMENT, namely, JOHN DOE numbers “1” through “10”, then proceeded to punch, hit and kick claimant JOSEPH WILLIAMS about his head and body, push and slam claimant JOSEPH WILLIAMS up against and onto his vehicle and onto the ground, and place claimant JOSEPH WILLIAMS under arrest and into handcuffs without any legal basis.

4. **The items of damage or injuries claimed are:** This is a claim for the recovery of monetary damages for the serious and permanent personal, mental and emotional injuries, pain and suffering, and loss of enjoyment of life sustained by the claimant, JOSEPH WILLIAMS. The claimant, JOSEPH WILLIAMS, was caused to be treated for injuries including injuries to his head, neck, and back, along with other serious and permanent personal injuries, the full extent of which are presently unknown.

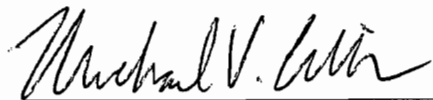
5. **The public entity causing the injury is:** The CITY OF NEWBURGH and the NEWBURGH POLICE DEPARTMENT.

6. **TOTAL AMOUNT CLAIMED:**

JOSEPH WILLIAMS .....	\$1,000,000.00
TOTAL AMOUNT CLAIMED.....	\$1,000,000.00

The undersigned claimants therefore present this claim for adjustment and payment. You are hereby notified that unless it is adjusted and paid within the time provided by law from the date of presentation to you, the claimants intend to commence an action on this claim.

Dated: New York, New York  
June 15, 2005



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LAW OFFICES OF MICHAEL V. CIBELLA, LLC  
On behalf of JOSEPH WILLIAMS  
Attorneys for Claimant  
60 East 42<sup>nd</sup> Street, Suite 950  
New York, New York 10165  
(212) 818-1880



## VERIFICATION

[illegible]

MICHAEL V. CIBELLA, ESQ., being duly sworn, deposes and says:

1. I am an attorney at law, duly admitted to practice before the Courts of the State of New York and a member of the LAW OFFICES OF MICHAEL V. CIBELLA, LLC, attorneys for claimant JOSPEH WILLIAMS.
2. I have read the annexed NOTICE OF CLAIM against the CITY OF NEWBURGH, POLICE OFFICER WILLIAM LAHAR, and JOHN DOE numbers "1" through "10", Individually, and know the contents thereof to be true to my knowledge, except those matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true based upon my personal knowledge, conversations with the claimant, and my review of the files maintained by my office.
3. The reason this Verification is being made by me is that the claimant JOSEPH WILLIAMS does not reside in this county.

Michael V. Carr

Michael V. Cibella, Esq.

Sworn to before me this 15<sup>th</sup>  
day of June, 2005

Forname Ostun  
Notary Public

LORRAINE OSTRIN  
Notary Public, State of New York  
No. 41-4819225  
Qualified in Queens County  
Commission Expires March 30, 2006